

**Memorandum of Understanding
Regarding Endangered Species Conservation Pool**

The State of New Mexico (“New Mexico”), acting through the New Mexico Interstate Stream Commission (“Commission”) and the New Mexico Attorney General, and the United States of America (“United States”), acting through the Army Corps of Engineers (“Corps”) and the Department of the Interior Bureau of Reclamation (“Reclamation”) hereby agree that:

WHEREAS, litigation under the federal Endangered Species Act (“ESA”), styled *Minnow v. Martinez*, was initiated in late 1999 on the middle Rio Grande in New Mexico seeking protection for the endangered Rio Grande silvery minnow and Southwestern willow flycatcher; and

WHEREAS, Reclamation, in cooperation with other entities, obtained and provided in excess of 168,000 acre-feet (“AF”) of stored water to allow continuous flow in the middle Rio Grande for the silvery minnow and for irrigation purposes in 2000; and

WHEREAS, these extraordinary water operations in combination with favorable precipitation during the fall of 2000 resulted in a 100,000 AF addition to New Mexico’s accrued Rio Grande Compact credit; and

WHEREAS, the water rights in the Rio Grande Basin have not been adjudicated and the extent of claims to Rio Grande water by third parties are uncertain; and

WHEREAS, New Mexico has recently proposed, as part of an offer of settlement of *Minnow v. Martinez*, to make available for use by the United States, for a period of three years, 100,000 AF of New Mexico’s native Rio Grande water and to establish a Middle Rio Grande Endangered Species Conservation Pool (“Conservation Pool”) in the Corps’ Middle Rio Grande Project Reservoirs; and

WHEREAS, New Mexico proposes, subject to the approval of the Rio Grande Compact Commission, to establish the Conservation Pool during 2001 through 2003 with native Rio Grande water (“Conservation Water”) that otherwise would have flowed downstream to Elephant Butte Reservoir and contributed to New Mexico’s Rio Grande Compact delivery; and

WHEREAS, New Mexico and the United States contemplate entering into a later agreement (“Conservation Water Agreement”) which will, among other things, provide for the release of Conservation Water for the benefit of the endangered species and address ESA issues upon completion of ESA consultation with the Fish and Wildlife Service; and

WHEREAS, Reclamation conducts reservoir accounting for the Corps’ middle Rio Grande reservoirs, and that accounting information is used for Rio Grande Compact annual accounting purposes.

NOW, THEREFORE, NEW MEXICO AND THE UNITED STATES AGREE THAT:

1. Upon the completion of all necessary approvals and regulatory requirements, New Mexico will establish the Conservation Pool, and the Corps will seek to capture and store up to 100,000 AF of Conservation Water in the Conservation Pool, subject to the prior approval of the Interstate Stream Commission of each change in reservoir operations that arises from this Memorandum of Understanding ("MOU");
2. The signatories will cooperate in good faith to obtain all necessary approvals and meet all necessary regulatory requirements as quickly as possible;
3. Conservation Water stored pursuant to this MOU will remain in storage, unless and until such water is made available for use by the United States pursuant to the contemplated Conservation Water Agreement. In the event that the Conservation Water Agreement is not executed prior to June 30, 2001, the United States agrees that it will release the Conservation Water to the Rio Grande between November 1, 2001 and March 1, 2002, at times and in quantities as specified by New Mexico.
4. Reclamation will perform hydrologic accounting for all reservoir operations pursuant to this MOU.
5. Nothing in this MOU shall affect or be construed or applied in a manner which is inconsistent with New Mexico or federal law. Nothing in this MOU shall be construed as an admission or concession of any issue of fact or law.
6. This MOU shall expire on the earlier of March 1, 2002, or the effective date of the Conservation Water Agreement. This MOU may be executed in multiple counterparts and shall be effective upon execution by all parties.

United States Corps of Engineers

Dated: April ____, 2001

Raymond G. Midkiff, District Engineer
Lieutenant Colonel, EN
Albuquerque District

United States Bureau of Reclamation

Dated: April ____, 2001

William Rinne, Acting Area Manager
Albuquerque Area Office

New Mexico Interstate Stream Commission

Dated: April ____, 2001

Richard P. Cheney, Chairman

New Mexico Attorney General

Dated: April ____, 2001

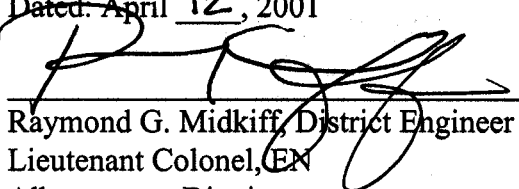
Patricia A. Madrid, Attorney General
Stephen R. Farris, Assistant Attorney General

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William Rinne, Acting Area Manager
Albuquerque Area Office

**New Mexico Interstate Stream
Commission**
Dated: April ____, 2001

Richard P. Cheney, Chairman

New Mexico Attorney General
Dated: April 11, 2001

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Albuquerque District

United States Bureau of Reclamation
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William E. Rinne
William Rinne, Acting Area Manager
Albuquerque Area Office

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Richard P. Cheney, Chairman

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